

Poor Land in Jail as Companies Add Huge Fees for Probation



Cary Norton for The New York Times

Richard Earl Garrett is the lead plaintiff in a class action suit against the town of Harpersville, Ala. Mr. Garrett has spent a total of 24 months in jail and owes \$10,000, all for traffic and license violations that began a decade ago.

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By **ETHAN BRONNER**

CHILDERSBURG, Ala. — Three years ago, Gina Ray, who is now 31 and unemployed, was fined \$179 for speeding. She failed to show up at court (she says the ticket bore the wrong date), so her license was revoked.

When she was next pulled over, she was, of course, driving without a license. By then her fees added up to more than \$1,500. Unable to pay, she was handed over to a private probation company and jailed — charged an additional fee for each day behind bars.

For that driving offense, Ms. Ray has been locked up three times for a total of 40 days and owes \$3,170, much of it to the probation company. Her story, in hardscrabble, rural Alabama, where Krispy Kreme promises that “two can dine for \$5.99,” is not about innocence.

It is, rather, about the mushrooming of fines and fees levied by money-starved towns across the country and the for-profit businesses that administer the system. The result is that growing numbers of poor people, like Ms. Ray, are ending up jailed and in debt for minor infractions.

“With so many towns economically strapped, there is growing pressure on the courts to bring in money rather than mete out justice,” said Lisa W. Borden, a partner in Baker, Donelson, Bearman, Caldwell & Berkowitz, a large law firm in Birmingham, Ala., who has spent a great deal of time on the issue. “The companies they hire are aggressive. Those arrested are not told about the right to counsel or asked whether they are indigent or offered an alternative to fines and jail. There are real constitutional issues at stake.”

Half a century ago in a [landmark case](#), the Supreme Court ruled that those accused of crimes had to be provided a lawyer if they could not afford one. But in misdemeanors, the right to counsel is rarely brought up, even though defendants can run the risk of jail. The probation companies promise revenue to the towns, while saying they also help offenders, and the defendants often end up lost in a legal Twilight Zone.

Here in Childersburg, where there is no public transportation, Ms. Ray has plenty of company in her plight. Richard Garrett has spent a total of 24 months in jail and owes \$10,000, all for traffic and license violations that began a decade ago. A onetime employee of United States Steel, Mr. Garrett is suffering from health difficulties and is without work. William M. Dawson, a Birmingham lawyer and Democratic Party activist, has filed a lawsuit for Mr. Garrett and others against the local authorities and the probation company, [Judicial Correction Services](#), which is based in Georgia.

“The Supreme Court has made clear that it is unconstitutional to jail people just because they can’t pay a fine,” Mr. Dawson said in an interview.

In Georgia, three dozen for-profit probation companies operate in hundreds of courts, and there have been similar lawsuits. In one, Randy Miller, 39, an Iraq war veteran who had lost his job, was jailed after failing to make child support payments of \$860 a month. In another, Hills McGee, with a monthly income of \$243 in veterans benefits, was charged with public drunkenness, assessed \$270 by a court and put on probation through a private company. The company added a \$15 enrollment fee and \$39 in monthly fees. That put his total for a year above \$700, which Mr. McGee, 53, struggled to meet before being jailed for failing to pay it all.

“These companies are bill collectors, but they are given the authority to say to someone that if he doesn’t pay, he is going to jail,” said John B. Long, a lawyer in Augusta, Ga., who is taking the issue to a federal appeals court this fall. “There are things like garbage collection where private companies are O.K. No one’s liberty is affected. The closer you get to locking someone up, the closer you get to a constitutional issue.”

The issue of using the courts to produce income has caught the attention of the country's legal establishment. A recent study by the nonpartisan Conference of State Court Administrators, "[Courts Are Not Revenue Centers](#)," said that in traffic violations, "court leaders face the greatest challenge in ensuring that fines, fees and surcharges are not simply an alternate form of taxation."

J. Scott Vowell, the presiding judge of Alabama's 10th Judicial Circuit, said in an interview that his state's Legislature, like many across the country, was pressuring courts to produce revenue, and that some legislators even believed courts should be financially self-sufficient.

In a 2010 study, the Brennan Center for Justice at the New York University School of Law [examined the fee structure in the 15 states](#) — including California, Florida and Texas — with the largest prison populations. It asserted: "Many states are imposing new and often onerous 'user fees' on individuals with criminal convictions. Yet far from being easy money, these fees impose severe — and often hidden — costs on communities, taxpayers and indigent people convicted of crimes. They create new paths to prison for those unable to pay their debts and make it harder to find employment and housing as well as to meet child support obligations."

Most of those fees are for felonies and do not involve private probation companies, which have so far been limited to chasing those guilty of misdemeanors. A decade or two ago, many states abandoned pursuing misdemeanor fees because it was time-consuming and costly. Companies like Judicial Correction Services saw an opportunity. They charge public authorities nothing and make their money by adding fees onto the bills of the defendants.

Stephen B. Bright, president of the [Southern Center for Human Rights](#), who teaches at Yale Law School, said courts were increasingly using fees "for such things as the retirement funds for various court officials, law enforcement functions such as police training and crime laboratories, victim assistance programs and even the court's computer system." He added, "In one county in Pennsylvania, 26 different fees totaling \$2,500 are assessed in addition to the fine."

Mr. Dawson's Alabama lawsuit alleges that Judicial Correction Services does not discuss alternatives to fines or jail and that its training manual "is devoid of any discussion of indigency or waiver of fees."

In a joint telephone interview, two senior officials of Judicial Correction Services, Robert H. McMichael, its chief executive, and Kevin Egan, its chief marketing officer, rejected the lawsuit's accusations. They said that the company does try to help those in need, but that the authority to determine who is indigent rests with the court, not the company.

"We hear a lot of 'I can't pay the fee,' " Mr. Egan said. "It is not our job to figure that out. Only the judge can make that determination." Mr. Egan said his company had doubled the number of completed sentences where it is employed to more than two-thirds, from about one-third, and that this serves the company, the towns and the defendant. "Our job

is to keep people out of jail,” he said. “We have a financial interest in getting them to comply. If they don’t pay, we don’t get paid.”

Mr. Bright, of the Southern Center for Human Rights, said that with the private companies seeking a profit, with courts in need of income and with the most vulnerable caught up in the system, “we end up balancing the budget on the backs of the poorest people in society.”